

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1136 of 1997

in

SPECIAL CIVIL APPLICATION No. 5622 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER

and

MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 - YES 2 TO 5-NO

G S R T C

Versus

ASHOKSINH RANJITSINH C/O RASHTRIYA GENERAL WORKERS'

Appearance:

MR HS MUNSHAW for Petitioner

MR HK RATHOD for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and

MISS JUSTICE R.M.DOSHIT

Date of decision: 14/10/97

ORAL JUDGEMENT {Per : Thakkar, J.}

Admitted.

Mr. H.R Rathod, learned counsel for respondent workman appears and waives service of notice of admission. In the facts and circumstances of the case, appeal is taken up for final hearing today.

This appeal is filed by the appellant -Gujarat State Road Transport Corporation Limited {"Corporation" for short} against an Award passed by the Labour Court, Bhavnagar in Reference LCB No. 706/93 on January 28, 1997 and confirmed by the learned Single Judge in Special Civil Application No. 5622 of 1997 on September 4, 1997.

The respondent was appointed as Off-day Reliever Watchman by the Appellant-Corporation in the year 1985. According to him, he was in continuous services in the Corporation till his services came to be terminated illegally in the year 1993. According to him, he was entitled to regularization with all benefits. When an advertisement was issued by the Corporation, he appeared before the Selection Committee as one of the candidates and was selected and placed in the "Select List" at Serial No. 18. In spite of his selection, he was not regularly appointed. On the contrary, he was removed from service. He, therefore, raised a dispute. The Labour Court, Bhavnagar held that the provisions of Section 25-F of the Industrial Disputes Act, 1947 {"Act" for short} were violated and accordingly, he was ordered to be reinstated with fifty per cent back wages. He was also awarded Rs. 400/= by way of costs. The said Award was challenged by filing the above petition. When the matter came up before the learned Single Judge, the learned Single Judge was of the opinion that the Labour Court has not committed any error of law and there was no reason to exercise power under Article 226 of the Constitution of India. The learned Single Judge, therefore, summarily dismissed the petition. It is against that order passed by the learned Single Judge that the present Letters Patent Appeal is filed.

We have heard Mr. Munshaw and Mr. H.K Rathod, learned counsel for the parties. Mr. Mushaw submitted that there was an error apparent on the face of record, committed by the Labour Court in observing that the workman was not appointed illegally by the Corporation, even though he was selected and was placed at Serial No. 18. Another error, according to Mr. Munsha, was that according to the tribunal the workman was appointed on

permanent basis and thereafter his services were terminated by an order dated June 17, 1993. According to the learned counsel, neither of the above statements was factually correct or legally well-founded. Initially the appellant was appointed as Off-day Reliever Watchman but at no point of time he was appointed on regular and/or permanent basis. It was true that a Select List was prepared wherein name of the workman was included and he was placed at Serial No. 18 but all the appointments which were made on regular basis did not reach upto Serial No. 18 but only upto Serial No. 17. Hence, the Labour Court was not right in observing that the workman was appointed on permanent basis. It is not true that the workman was appointed on permanent basis, and thereafter his services were terminated in June, 1993. Mr. Mushaw further submitted that in his entire service career, the workman had not completed 240 days in any one year, and hence, the provisions of Section 25-F would not apply.

On the other hand, Mr. Rathod supported the Award passed by the Labour Court and confirmed by the learned Single Judge. He submitted that before the Labour Court, no evidence was produced on behalf of the Corporation. It is not open to the Appellant-Corporation now to produce evidence as the ambit and scope of jurisdiction under Articles 226 and 227 of the Constitution of India is limited to see as to whether a subordinate Court or inferior Tribunal has committed an error apparent on the face of record. If nothing was produced before the Tribunal by the employer and the Tribunal has passed an order, it cannot be said to be illegal.

In the facts and circumstances of the case, in our opinion, this Letters Patent Appeal deserves to be partly allowed. So far as reinstatement is concerned, in our opinion, no interference is called for. Though arguments were advanced before us by Mr. Rathod drawing a distinction between the nature and scope of inquiry under sub-section (1) of Section 25F and sub-section (2) of section 25F of the Act, in the facts and circumstances of the case, in our opinion, it is not necessary to express final opinion, one way or the other. In the light of fact that according to the workman he was in continuous service as off day Reliever and his services were not terminated in accordance with law, it could not be said that the Labour Court has committed any error in invoking provisions of Section 25F. No interference is,

therefore, called for against the order passed by the learned Single Judge.

So far as backwages are concerned, in our view, in the facts and circumstances of the case, Tribunal ought not to have granted backwages. Even according to the case of the workman he was Off-day Reliever. He was selected and placed at Serial No. 18. From the record, it is clear that he was not regularly appointed as permanent employee. In such situation, in our opinion, general principle of "NO WORK NO PAY" would apply and the workman cannot be granted backwages. At the same time, however, when the award was passed by the Labour Court on January 28, 1997, it was expected of the Appellant-Corporation to comply with the said Award and to reinstate the workman. Admittedly, that was not done. In view of that fact, the workman cannot be denied relief of backwages atleast from the date of Award ie., January 28, 1997 and to that extent, we must grant relief in favour of the workman.

In the result, Letters Patent Appeal deserves to be partly allowed and is accordingly allowed. So far as reinstatement is concerned, the Award passed by the Labour Court and confirmed by the learned Single Judge is confirmed. Regarding back wages, instead of full back wages, the appellant-Corporation will pay back wages to the workman from the date of Award i.e., January 28, 1997. Appeal stands partly allowed. In the facts and circumstances of the case, no order as to costs.

Prakash*
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